

1986

# Shauna F. Hodges v. Gibson Products Company : Reply Brief

Utah Supreme Court

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DOCKET NO. 20929

**IN THE SUPREME COURT OF THE STATE OF UTAH**

SHAUNA F. HODGES,

Plaintiff-Respondent,

**VS.**

Case No. 20929

GIBSON PRODUCTS COMPANY, d/b/a  
GIBSON'S DISCOUNT CENTER, a  
Utah corporation, and CHAD  
CROSGROVE, an individual,

**Defendants-Appellants.**

## REPLY BRIEF OF DEFENDANTS-APPELLANTS

APPEAL FROM THE THIRD JUDICIAL DISTRICT COURT  
OF SALT LAKE COUNTY, STATE OF UTAH  
THE HONORABLE JOHN A. ROKICH, DISTRICT JUDGE, PRESIDING

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SEP 17 1986

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IN THE SUPREME COURT OF THE STATE OF UTAH

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SHAUNA F. HODGES,	:	
	:	
Plaintiff-Respondent,	:	
	:	
vs.	:	Case No. 20929
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GIBSON PRODUCTS COMPANY, d/b/a	:	
GIBSON'S DISCOUNT CENTER, a	:	
Utah corporation, and CHAD	:	
CROSGROVE, an individual,	:	
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Defendants-Appellants Gibson Products Company, Inc., hereinafter Gibson's, and Chad Crosgrove submit the following brief in reply to that filed by Plaintiff-Respondent.

### **ARGUMENT**

#### **POINT I: THE ISSUE OF WRONGFUL DISCHARGE WAS IMPROPERLY SUBMITTED TO THE JURY**

This Court has once again reaffirmed its adherence to the "at-will" doctrine, reserving only limited instances in which the doctrine does not apply. Rose v. Allied Development Co., 34 Utah Adv. Rep. 29 May 13 (1986). None of the limited exceptions set forth in Rose apply in this case.

The Court in Rose reiterated that an employer could not violate state or federal law or breach a contract when firing an employee and then escape liability. If neither of those circumstances exist, however, employment "is no more than an indefinite general hiring which is terminable at the will of either party." Bihlmaier v. Carson, 603 P. 2d 790 (Utah 1979), at 792. Ms. Hodges has neither plead nor proved that either stated exception applies. The instruction given to the jury on the issue of wrongful discharge therefore was not a proper statement of Utah law and Defendants-Appellants were prejudiced by the trial court's submission of the issue to the jury.

The policy behind the doctrine is sound and should again be upheld by this Court. The brief of Defendants-Appellants previously filed with the Court cites numerous cases which set out important considerations supporting the preservation of the "at will" doctrine.

Further, the jury's finding of "wrongful" discharge was unsupported by the evidence presented at trial. The Defendants-Appellants in good faith believed that the accusations were true and that the employment relationship had been damaged as a result. This forms a reasonable basis for the firing and negates any "wrongful" motive on the part of Defendants.

Because wrongful discharge is not a viable cause of action in Utah except under limited circumstances not present in this case and because Plaintiff-Respondent failed to establish that either of the Defendants-Appellants acted wrongfully, the jury's verdict should be set aside.

**POINT II: THERE WAS INSUFFICIENT  
EVIDENCE TO SUPPORT THE JURY'S VERDICT  
REGARDING MALICIOUS PROSECUTION**

The Plaintiff-Respondent failed to prove the necessary elements of a cause of action for malicious prosecution: that Defendants-Appellants did not have probable cause for initiating the proceedings; that Defendants-Appellants acted primarily for a purpose other than bringing an offender to justice; and that the action was terminated in favor of Plaintiff-Respondent.

The Plaintiff-Respondent's argument in Point I of her brief relies on a premise which is not substantiated by the evidence: That Chad Crosgrove really committed the theft with which Ms. Hodges was charged and Defendants-Appellants knew that to be the case when presenting evidence to the prosecutor. From this assertion Plaintiff-Respondent concludes that Defendants-Appellants did not have probable

cause to present evidence to the prosecutor and that they did not fully disclose all material facts concerning the loss.

Defendants-Appellants, however, did have probable cause to suspect Plaintiff-Respondent of theft and to proceed with police investigation of the matter. At the time of meeting with the police, Defendants-Appellants presented the discrepancy discovered between the cash and register receipts, information concerning Ms. Hodges' access to the cash and receipts, and the register tapes and checking account deposit slip from Ms. Hodges' personal account. This was all of the information available to Defendants-Respondents with regard to the loss.

Additionally, Defendants-Appellants were relying upon the knowledge and advice of the prosecutor to determine whether their evidence was sufficient to prosecute. There is no evidence that employees of Gibson's interfered with the decision to prosecute Ms. Hodges. It was up to the prosecutor to decide if further information was required or if he could proceed based upon the information at hand. This decision, if in error, should not create liability in these Defendants.

Contrary to Plaintiff-Appellant's assertions, none of Defendants' agents "directed" the prosecutor to dismiss the charges against Ms. Hodges. Mr. Dever, the prosecutor, elected not to proceed based on his judgment of the potential for obtaining a verdict against Ms. Hodges. (TR 112)

The Defendants-Appellants were further prejudiced by the Court's erroneous direction to the jury that the dismissal of charges was a



resolution in Plaintiff's favor. Mr. Dever did not dismiss the charges against Ms. Hodges because he believed she was innocent, but because circumstances had made it difficult to present a case - his primary witness could not testify.

Plaintiff-Respondent can sustain her cause of action for malicious prosecution only by proving that Defendants-Appellants initiated prosecution of Ms. Hodges for an improper purpose. Plaintiff-Respondent's argument is based on the assumption that Chad Crosgrove committed the theft with which she was charged. It further assumes that Gibson's knew this to be the truth. Neither of Plaintiff-Respondent's assumptions were substantiated by the evidence nor were they submitted to the jury for determination. Plaintiff-Respondent has failed to prove the necessary elements of her claim for malicious prosecution and the jury's verdict should be set aside.

**POINT III. THE ISSUE OF PUNITIVE DAMAGES  
WAS ERRONEOUSLY SUBMITTED TO THE JURY  
AND THE JURY'S AWARD OF SUCH DAMAGES IS  
NOT SUPPORTED BY THE EVIDENCE.**

In support of an award of punitive damages, Plaintiff-Respondent again relies upon the premise that Chad Crosgrove committed the theft with which she was charged without providing proof and without submitting that issue to the jury. The Plaintiff-Respondent did not prove that Defendants-Appellants acted maliciously, recklessly or with a knowing disregard of Ms. Hodges' rights. Rather, Defendants-Appellants showed that their actions were prompted by a reasonable belief of Plaintiff-Respondent's guilt.

Even if Plaintiff-Respondent had proven Chad Crosgrove committed the theft for which she was prosecuted, which Defendants-Appellants deny, Crosgrove's acts could not be fairly imputed to Gibson's. Such acts would not be of benefit to Gibson's and give no basis for liability against Gibson's for punitive damages.

### CONCLUSION

For the reasons set out in the brief and this reply brief of Defendants-Appellants, the jury's verdict in this case should be set aside. The issues of wrongful discharge and punitive damages were improperly submitted to the jury. Moreover, the jury's findings on these issues as well as on the issues of malicious prosecution and special damages are not supported by the evidence.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of September, 1986.

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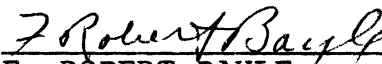
**CERTIFICATE OF MAILING**

I hereby certify that on this 16<sup>th</sup> day of September, 1986, I served the foregoing REPLY BRIEF OF DEFENDANTS-APPELLANTS upon Plaintiff-Respondent by mailing four copies of the same, postage prepaid, to:

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